

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STATE OF IOWA; KIMBERLY REYNOLDS, in her official capacity as Governor
of Iowa; BRENNNA BIRD, in her official capacity as Attorney General of Iowa;
IOWA DEPARTMENT OF PUBLIC SAFETY; and STEPHAN KENNETH
BAYENS, in his official capacity as Commissioner of Iowa Department of Public
Safety,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Iowa

ADDENDUM TO BRIEF FOR THE UNITED STATES

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8 U.S.C. § 1326

§ 1326. Reentry of removed aliens

(a) In general

Subject to subsection (b), any alien who--

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under Title 18, or imprisoned not more than 2 years, or both.

* * *

Iowa Code § 718C.1

§ 718C.1. Definitions

As used in this chapter:

1. “Alien” means the same as defined in 8 U.S.C. § 1101, as of January 1, 2023.
2. “Port of entry” means a port of entry in the United States as designated by 19 C.F.R. pt. 101.

Iowa Code § 718C.2

§ 718C.2. Illegal reentry into state by certain aliens

1. A person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state under any of the following circumstances:
 - a. The person has been denied admission to or has been excluded, deported, or removed from the United States.
 - b. The person has departed from the United States while an order of exclusion, deportation, or removal is outstanding.
2. An offense under this section is an aggravated misdemeanor, except that the offense is:
 - a. A class “D” felony if any of the following are true:
 - (1) The person's removal was subsequent to a conviction for commission of two or more misdemeanors involving drugs, crimes against a person, or both.
 - (2) The person was excluded pursuant to 8 U.S.C. § 1225(c) because the defendant was excludable under 8 U.S.C. § 1182(a)(3)(B).
 - (3) The person was removed pursuant to the provisions of 8 U.S.C. ch. 12, subch. V.
 - (4) The person was removed pursuant to 8 U.S.C. § 1231(a)(4)(B).
 - b. A class “C” felony if the person was removed subsequent to a conviction for the commission of a felony.
3. For purposes of this section, “removal” includes an order issued under this chapter or any other agreement in which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state law.

Iowa Code § 718C.4

§ 718C.4. Order to return to foreign nation

1. A judge during a person's initial appearance following an arrest for a violation of this chapter may, after making a determination that probable cause exists for the arrest, order the person released from custody and issue a written order in accordance with subsection 3.
2. The judge in a person's case at any time after the person's initial appearance may, in lieu of continuing the prosecution of or entering an adjudication regarding an offense under this chapter, dismiss the charge pending against the person and issue a written order in accordance with subsection 3.
3. A written order authorized by subsection 1 or 2 shall discharge the person and require the person to return to the foreign nation from which the person entered or attempted to enter, and may be issued only if all of the following requirements are met:
 - a. The person agrees to the order.
 - b. The person has not previously been convicted of an offense under this chapter, or previously obtained a discharge under an order under subsection 1 or 2.
 - c. The person is not charged with another offense that is punishable as an aggravated misdemeanor or any higher category of offense.
 - d. Before the issuance of the order, the arresting law enforcement agency has done all of the following:
 - (1) Collected all available identifying information of the person, which must include taking fingerprints from the person and using other applicable photographic and biometric measures to identify the person.
 - (2) Cross-referenced the collected information with all relevant local, state, and criminal databases and federal lists or classifications used to identify a person as a threat or potential threat to national security.
4. Upon a person's conviction of an offense under this chapter, the judge shall enter in the judgment in the case an order requiring the person to return to the foreign nation from which the person entered or attempted to enter. An order issued under this subsection takes effect on completion of the term of confinement or imprisonment imposed by the judgment.
5. An order issued under this section must include all of the following:
 - a. The manner of transportation of the person to a port of entry.

- b. The law enforcement officer or state agency responsible for monitoring compliance with the order.
- 6. An order issued under this section must be filed with the county clerk of the county in which the person was arrested for an order described by subsection 1, or with the clerk of the court exercising jurisdiction in the case for an order described by subsection 2 or 4.
- 7. Not later than the seventh day after the date an order is issued under this section, the law enforcement officer or state agency required to monitor compliance with the order shall report the issuance of the order to the department of public safety for inclusion in the computerized criminal history system.

Iowa Code § 718C.5

§ 718C.5. Refusal to comply with order to return to foreign nation

1. A person who is an alien commits an offense if all of the following are true:
 - a. The person has been charged with or convicted of an offense under this chapter.
 - b. A judge has issued an order under this chapter for the person to return to the foreign nation from which the person entered or attempted to enter.
 - c. The person failed to comply with the order.
2. An offense under this section is a class “C” felony.

Iowa Code § 718C.6

§ 718C.6. Abatement of prosecution on basis of immigration status determination prohibited

A court may not abate the prosecution of an offense under this chapter on the basis that a federal determination regarding the immigration status of the person is pending or will be initiated.